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FC EIGN SERVICE DESPATCH

FROM

U. S. Mission Berlin

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TO

THE DEPARTMENT OF STATE, WASHINGTON.

June 12, 1959

DATE

REF

USBER Tel 1108 to Department, 992 to Bonn, 112 to Geneva

18	ACTION	REPLY
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SUBJECT Berlin Senat Report on Civil Access to Berlin

Attached hereto is the English translation of the complete German text of the report from the Berlin Senat containing its recommendations on civilian access to West Berlin.

For the Assistant Chief of Mission:

Edward W. Doherty
Chief

Economic Affairs Section

CINCEUR,

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Page 1

Enclosure 1 to USBER Despatch No. 863
June 12, 1959

Translation

SUBJECT: Free Access to West Berlin

In case in the course of the Geneva conference, an agreement among the Four Powers as to the rights of the three Western powers in West Berlin and as to the connection of West Berlin with West Germany comes under consideration, the rules on free access to West Berlin must also cover the civilian sector. If the Soviet side insists upon its claim that certain control rights be transferred to organs of the GDR (whether under instructions from the Four Powers or from the Soviet Union), and the Western Powers are inclined to accept this proposal of the Soviet Union, then, from the standpoint of Berlin a firm agreement must be demanded concerning the nature and the exercise of control rights as to civil traffic. As to military traffic we have no particular suggestions to make since we assume that the Western powers have a clear concept of the security needs of their position in West Berlin. At this time we also have no detailed suggestions as to traffic between West Berlin and East Berlin or between West Berlin and the so-called GDR, although it would be urgently desired to make freedom of traffic within these parts of Germany likewise an object of agreement. However, we believe that traffic in the area of the so-called GDR and intersector traffic in Berlin are of a somewhat different political nature from the traffic between West Berlin and West Germany.

The question of the constitutional relationships of the FedRep to Berlin as well as Berlin's international representation by the FedRep will not be discussed here although they are of vital significance to Berlin. These problem areas likewise must naturally be dealt with within the framework of new agreements; these relationships must be confirmed without change/with express recognition of their legal validity.

and

If the Western powers broach the question of free access to Berlin in the civilian area, such an agreement could either replace the old legal basis which rests upon Four Power agreement, or supplement it. The latter, in terms of confirming the former rights, seems to us to be the more advantageous even though the (new) agreement would be a codification of overall traffic rights (in the broadest sense) with regard to the connection between West Berlin and West Germany.

These agreements could be decided upon and put in force by the Four Powers. One can conceive, however, that the Four Powers would decide upon a clause whose putting in force would be supervised by German authorities. This last mentioned possibility would represent a very far-reaching concession which in our opinion should be offered only at an advanced stage in the negotiations.

CONFIDENTIAL

901048-64

~~CONFIDENTIAL~~

Page 2 of Enclosure 1
Despatch No. 863
U. S. Mission Berlin, June 12, 1959

From the standpoint of Berlin, the agreements would be of value only if they

(a) created a firm, long-term basis for traffic between West Berlin and West Germany (running from 10 to 15 years with an extension clause in case, by the expiration of the period, reunification had not yet taken place);

(b) provided for the setting up of arbitration and mediation courts in cases of dispute (these arbitration and mediation bodies would have to be competent both for legal disagreements which might arise from the implementation of the agreement, and for intended alterations of provisions then in force governing traffic between West Berlin and West Germany -- for example -- the raising of tolls, closing of border crossing points, restriction of traffic and so on).

I

In detail the agreement would have to deal with

1) the use of roads between West Berlin and West Germany (for example, by automotive vehicles, motorcycles, pedestrians); further, with the height of tolls, which should be only so high as to equal the cost of maintenance and in connection with which the possibility of lump sum payment should be granted; further, with rules on keeping open the agreed traffic routes and so on.

2) Railroads.

The scheduling of trains in accordance with the presently valid agreement with allowances for the possibility of an improvement in traffic (in this connection, the question of rates would have to be taken up).

3) Waterways.

Specification of the waterways to be kept open and the conditions of their use. (Settlement of the tolls question).

4) Air traffic.

This would require confirmation of all agreements on air traffic between West Berlin and West Germany. Necessary: define the participation of governmental agencies of the GDR in air safety procedures. Question, whether fees for this should be paid in a lump sum. If agreed to, this might provide greater assurance that the treaty will be respected. Question of admission of German and international airlines to Berlin must be aired.

5) The right to lay telephone lines through the area of the GDR must be considered. Further, assurance must be given that long distance radio-telephone facilities between West Berlin and West Germany will not be interfered with.

~~CONFIDENTIAL~~

901048-65

~~CONFIDENTIAL~~

Page 3 of Enclosure 1
Deepatch No. 863
U. S. Mission Berlin
June 12, 1959

II

As to the control of the traffic of goods and persons between West Berlin and West Germany, it must be considered a basic general principle that controls will not take place in cases where arrangements are such that no deviation from direct transit through the GDR appears possible. This applies to every airplane flight over the Soviet Zone and further, also to closed railroad trains and closed freight trucks.

For the rest, control of persons must be restricted to the identity of the persons and ordinary transit examination. In connection with goods traffic, control would have to be confined to assuring unbroken transit through the Zone and the non-transfer of freight. In connection with this there are rules for transit traffic that could be applied.

III

Arbitration and Mediation Courts.

Every unilateral change in existing conditions would require a deliberation in an arbitration commission which would be constituted on a basis of parity and would have a non-partisan chairman. The competence of the commission would be extensive so that arbitrary steps by either side would be excluded. Regarding the implementation of then-existing rules, an arbitration proceeding would be envisaged which would make binding decisions as to the legality of a procedure.

IV

Duration of the Agreement.

As brought out in the foregoing, the duration of the agreement should be set at 10 to 15 years. Extension of the agreement should be made obligatory in the event that reunification has not been achieved at the expiration of the agreement.

The above criteria should be considered in case the question of access routes is discussed and a general agreement is contemplated. Details could be settled only by a committee of experts. It is to be assumed that it would require a long time to work out all details of this question. From the standpoint of the Berlin Senat it appears of little use to leave the complex of questions related to traffic between West Berlin and Western Germany entirely to the discretion of agencies of the Soviet Zone by leaving to them the exercise of controls, without agreement on concrete provisions with respect to exercise and extent of the controls.

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